

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**SEP 16 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2009-0117-PR
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
DONALD ALLEN GUADAGNI,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054436

Honorable Hector E. Campoy, Judge

REVIEW GRANTED; RELIEF DENIED

Donald Allen Guadagni

Tucson  
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, Donald Allen Guadagni was convicted of bigamy and ordered to pay restitution to his two victims. This court affirmed his conviction on appeal but vacated the restitution order, concluding the trial court had violated Guadagni's rights to

due process and assistance of counsel by entering the order following an ex parte proceeding. *State v. Guadagni*, 218 Ariz. 1, ¶¶ 20, 24, 178 P.3d 473, 479, 480 (App. 2008). The matter was remanded for further proceedings, and following an evidentiary hearing, the trial court ordered Guadagni to pay a total of \$2,464.77 in restitution to the victims. We affirmed that order on appeal. *State v. Guadagni*, No. 2 CA-CR 2008-0314 (memorandum decision filed June 26, 2009).

¶2 Guadagni filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., arguing the trial court had violated his Sixth Amendment right to cross-examine one of his victims by prohibiting him from questioning her about her alleged pregnancy by another man during the time of her marriage to Guadagni. *See* U.S. Const. amend. VI. The court summarily denied relief, finding Guadagni’s claim precluded under Rule 32.2(a)(1). We review the court’s ruling for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Finding none, we deny relief.

¶3 Rule 32.2(a)(1) provides “[a] defendant shall be precluded from relief under this rule based upon any ground” that was “[r]aisable on direct appeal.” Guadagni could have raised his claim on direct appeal. Moreover, he did not argue below, nor does he contend on review, that any of the exceptions to preclusion identified in Rule 32.2(b) apply to this case. Thus, the trial court did not abuse its discretion in finding Guadagni’s claim

precluded, and although the court also addressed the merits of the claim, we need not do so here.<sup>1</sup> We grant review of Guadagni’s petition for review, but we deny relief.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge

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<sup>1</sup>To the extent Guadagni has attempted to raise on review a claim of ineffective assistance of appellate counsel, we do not address that claim here because it was not raised in the petition for relief below. *See* Rule 32.9(c)(1)(ii) (petitioner may raise on review issues decided by trial court).